



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

TENDENCIES OF AMERICAN LEGISLATION.

BY SAMUEL J. BARROWS, COMMISSIONER FOR THE UNITED STATES
ON THE INTERNATIONAL PRISON COMMISSION.

ONE of the many illustrations which might be adduced as to the denationalizing effect of the American system of local self-government is, that at the capital of the nation not the slightest provision has ever been made for a comparative study, analysis, and classification of the legislation of the different States and Territories. The output of coal and iron, the volume of agricultural products, the totals of manufacturing industries, are all carefully analyzed and compared and made the subject of exhaustive treatises for the purposes of commerce and trade; but the output of State legislation, which bears a vital relation to the development and expression of the national life, is not recognized as of sufficient importance to be even indexed by the general government. This is a function of public service which might naturally be devolved upon the Library of Congress or the Department of State; but it has never been required or requested by Congress, the body which might be supposed to recognize the advantages of a conspectus of the tendencies and movement of American legislation. Only a few years ago, I found it difficult to find in Washington a complete set of the session laws of the different States. Mr. James Bryce, in writing his "American Commonwealth," likewise found it difficult, he said, to get the constitutions of the different States. The compilation which Ben Perley Poore made some years ago, and which was published by Congress, has long been out of date. It was left for the State of New York, when it held its Constitutional Convention, to do what ought to have been done by the general government—that is, to bring together and edit the constitutions of the different States, which the convention needed as a basis for its discussions.

So it has been left for the State of New York to do two other things which more naturally ought to be done by the general government. One is the publication every year of a *Comparative Summary and Index of Legislation* by the New York State Library, covering all the public laws passed by the fifty-one separate legislatures. The other is the establishment at Albany of an anthropometric bureau of identification, for the registration of criminals in all States of the Union, the several States being simply asked to furnish the data from their prisons. The State Library has now gone further. In order that readers may not be without a guide in threading the mazes of this labyrinth of legislation, it has prepared in a separate volume a *Review of Legislation*, in which every subject embraced in the classification is assigned to a competent specialist, the whole volume, like the Summary, being under the charge of the librarian of the sociological department, Dr. R. H. Whitten. In the compass of 240 pages, 46 subjects are treated by 38 specialists, Dr. Whitten himself writing four of the papers. All the papers are founded upon the legislation of 1901, though comparisons are often made covering a series of years.

Reviews and compilations on a few special lines have not been hitherto wanting. Colonel Carroll D. Wright has issued, in his Bulletins from the Department of Labor, valuable compilations of the labor laws of the States. For the International Prison Commission I prepared a review of New Legislation Concerning Crimes and Misdemeanors, which showed the movement of criminal law in the United States for the years 1897-98. The Bureau of Education and the Department of Agriculture have recognized the value of comparative legislation on special lines; but for the first time we now have a review of legislation which is comprehensive enough to cover the entire field of legislative activity. And Mr. Melvil Dewey, the director of the New York State Library, who has inspired this work, encourages us to believe that it will be done by the State of New York every year. Leaving out the kaleidoscopic and kakeidoscopic mirrors of the American press, there is nothing which is such a perfect reflector of American life, institutions, habits, and commercial, political and educational organization; nothing which serves so well as a barometer of ethical sentiment as the fifteen or twenty thousand pages which are bound up annually in the session laws. Taking

these laws for 1901, the threshold year of the new century, what do they, as interpreted by 38 law chemists, show as to the tendencies of our American civilization?

Looking first at fundamental questions relating to political constitutions and organization, it is to be noted that the new constitution of Alabama went into effect on November 28th, 1901, and that constitutional conventions have been held in Virginia and Connecticut. The Alabama constitution, like those recently adopted in New York, South Carolina and Delaware, is marked by a great increase in bulk. The growing habit of forcing into constitutions a large amount of matter which ought to be left to legislative enactment is to be deprecated. Twelve States have applied to Congress to call a constitutional convention on the subject of a direct vote by the people for United States Senators. Increase in population has compelled re-districting, and eighteen States have made a re-apportionment of Congressional districts, fifteen States have re-apportioned representation in the upper and lower branches of the legislature, and seven others representation in either the upper or lower branch. Alabama is the first State to adopt quadrennial instead of biennial legislative sessions. The new constitution limits the regular session to a period of fifty days once in four years. The Governor may call special sessions limited to thirty days, but no acts can be passed other than those designated in the Governor's proclamation except by a two-thirds vote. Alabama has made another decided reform. Its statute books have hitherto been padded beyond measure with local, special and private laws. The new constitution will correct much of this abuse.

Dr. Whitten notes a "growing distrust of the legislature in the constitution of almost every State." Some States are making provision for more direct legislation. The South Dakota constitutional amendment, providing for the initiative and referendum, adopted in 1898, has not yet been made use of. Utah adopted in 1900 a constitutional amendment providing for the initiative and referendum, but the legislature of 1901 failed to pass the legislation needed to put it into effect. Oregon submits a similar amendment to vote of the people in 1902. An Act providing for the submission of questions to electors was adopted by Illinois; and a provision of similar purpose, but of different effect, will come up before the Nevada Legislature of 1903. Some of these

provisions for the referendum are cumbersome. They indicate a reaction from representative towards purely democratic government. It is evident that this movement may go too far. We shall make a mistake if we abolish instead of improving our legislatures.

Passing to the organization of State government, nothing is more evident than the remarkable increase in the number of new departments, boards and commissions. This multiplication of State machinery provides for the inspection, supervision, and regulation of various interests and activities. During the last year, more than forty new State offices or boards were authorized by the various legislatures. They represent the interests of agriculture, labor, public health or safety, the care of defectives, dependents, and delinquents. Minnesota has created a board of control, of three members, to have supervision over the charitable, reformatory and penal institutions of the State. Kansas has reorganized its State Board of Charitable Institutions as a board of control. The tendency towards centralization in administration is seen to be strong in the Western States. There are now centralized boards of control in nine States, Kansas, Wyoming, South Dakota, Wisconsin, Arkansas, Nebraska, Washington, Iowa, Rhode Island, the latter being the only representative of the Eastern States in this policy. Of the fifty boards or commissions mentioned, nearly all are appointed by the Governor, thus increasing the power of the executive. A disposition is evident to increase the compensation of State officers.

Some of the Western States have been rather reckless heretofore in allowing foreigners to vote. A proposed constitutional amendment in Colorado denies the suffrage to all but citizens. In Texas intention could be declared at any time before election, but a proposed amendment requires aliens to declare their intention of becoming citizens six months before election.

With reference to election methods, the movement for voting machines is making rapid progress in various States. California has passed severe laws against extremes of defamation or of caricature of candidates for office. The system of direct nominations without the medium of a convention already exists in various States. Oregon has passed a stringent law doing away with the convention system. This act does not seem to be free from objection, for it renders it possible for the members of one party to participate in the nominations of another.

In the sphere of city government, the policy of State interference still continues, but there seems to be no doubt of the steady growth of home-rule provisions, the disposition to throw upon cities the responsibility and privilege of managing their own affairs. Notable among city government laws was the new charter of Greater New York, passed without the acceptance of the city. Various city charters provide for a non-partisan distribution of offices. Dr. Max West of the United States Department of Agriculture points to the fact that inheritance-tax legislation exhibits radical tendencies in the direction of high and progressive rates in several States. The heaviest taxes on collateral inheritances of personal property are levied in North Carolina, but they are applied to personal property alone. More than one-half of the States in the Union now have inheritance taxes. With reference to business corporations, the legislation for 1901 tended towards an increase in incorporation and license fees. Colorado has shown its hostility against foreign corporations by imposing license fees fifty per cent. greater than those imposed on domestic corporations.

Dr. Whitten reports the most important movement in the taxation of public-service corporations to be the substitution of taxation at actual value for various kinds of specific taxes. In Michigan, "equal taxation," as it is called, triumphed this year after a long, exciting and obstinate struggle. Substantial progress has been made in Dakota in a movement to substitute *ad valorem* for specific taxes.

School legislation in 1901 was important and significant. The tendency is towards better organization and further centralization in the supervision of teachers. Attendance requirements are more rigid. State and local provisions for the support of schools show a liberal increase. Especially noticeable is the extension of secondary education, the multiplication of free libraries, the increase of instruction in agriculture and mechanic arts, the adoption of uniform text-books and the establishment of higher standards for teachers. Dr. William T. Harris, who has so long advocated the consolidation of rural schools in sparsely settled districts and the transportation of pupils, notes with satisfaction the growth of laws in this direction in Indiana, Minnesota, Kansas, Missouri and Nebraska. Another happy tendency is seen in the increased provision for kindergarten instruction. "Nothing yet invented,"

says Dr. Harris, "is equal to the kindergarten for the instruction and nurture in right habits and views of life of the children of the slums." If public education is spreading at the roots, it is also spreading at the top. The Commissioner of Education shows that there has been an enormous increase of free, public high-schools in the United States in recent years. They increased from something less than fifty in 1860 to 2,523 in 1890; and during the ten years from 1890 to 1900 they increased to 6,005. Coincident with the growth of cities is the provision to lengthen the school term. It has been likewise lengthened in the rural districts. The average school term in the United States has increased from 130 days in 1881 to 145 days in 1900. Another tendency is against nepotism and political influence in school affairs. Up to 1900, thirty-one States had already adopted compulsory laws of one kind or another. During the last year, thirteen States have passed laws requiring a prescribed minimum of attendance during the year for those of school age working in factories. Professor Brown, of the University of California, declares that recent "legislative movements are indicative of the new purpose which has been dawning upon the American people—the purpose to make secondary education accessible to every child in the land who is capable of doing the work of a secondary school."

As to higher and professional education, there is no common standard in the United States. With reference to the practice of law, changes have been made in the laws of ten States and Alaska and the Philippines. In sixteen political divisions women are now admitted to practice by special laws. In twenty-eight political divisions, according to Dr. Henry L. Taylor, of the University of the State of New York, they seem to be admitted by inference, and to be definitely excluded only in six political divisions, viz., Alabama, Arkansas, Georgia, Tennessee, Texas, Virginia. In Rhode Island and Vermont the statutes and rules are silent; and, strange to say, no woman seems to have tried to break the silence by applying for admission.

Legislatures have taken a heavy dose of medicine in the past year; for, since January 1st, 1900, twenty-eight political divisions of the country have medicated their laws, all except Alaska now having examining boards for the regulation of the practice of medicine. Osteopathy, "discovered" in 1874, is now

recognized by law in fifteen States. Changes in laws concerning dentistry in the last two years have been made in thirteen political divisions, and the practice of dentistry is now regulated by law in fifty political divisions of the United States, and pharmacy is regulated by statute in forty-nine. In eighteen States a diploma in pharmacy does not now admit to practice, an examination being required in all cases. This shows the increased care which is regarded as necessary in the compounding and sale of drugs. Veterinary medicine is regulated by statute in sixteen States.

Imagine Mr. Carnegie's delight in knowing that, in 1901, ninety-two library laws pertaining to the State at large in thirty-one States and Oklahoma were passed, not including the great number of local acts applying to special libraries or localities. The South is not conspicuous in this legislation; thirty-nine of these laws were passed in the Central States, thirty in the North Atlantic States. Mr. Melvil Dewey informs us that, since 1889, twenty States have established library commissions. Seven States increased the powers, duties and funds of these commissions in the last year. Delaware, Nebraska, Washington and Idaho created new commissions, notwithstanding the fact that a Philistine in Idaho moved to amend the title of the bill to read "A bill to provide employment for idle people." Mr. Dewey notes that the evolution of the district library and home education department is going on in all the more progressive States. Illinois gives \$2,500 a year for libraries for its farmers' institutes. Travelling libraries increase in influence and recognition, Idaho appropriating no less than \$6,000 annually for this purpose. More liberal laws for establishment and maintenance have been passed in fifteen States. New Hampshire has a law requiring the provision of public libraries in every town of the State, and Mr. Dewey reports a large number of laws passed for the promotion of historical societies, geological surveys, and other scientific interests. The historic and æsthetic spirit is more and more asserting itself. Movements for the preservation of scenic and historic places and objects secure legislative approval.

In the field of charity the same tendency towards centralization of institutions is to be noted. A fresh impulse to the child-saving movement is recorded in the legislation of various States. The probation system, as applied to children, finds a new instrument in the children's court adopted by Illinois and Pennsylvania and

by the city of New York. Indiana, in the view of many, has taken a backward step in allowing children between the ages of three and seventeen to be kept in the almshouse for sixty days, instead of for ten days only as heretofore. Improved legislation appears for the insane, the feeble-minded and epileptic. Following the example of New York and Texas, New Jersey last year passed an act to establish a village for epileptics. In its admission of the well-to-do and middle classes, as well as paupers and indigents, and in the power granted the managers to hold and detain patients judicially committed, the New Jersey law is progressive.

Laws relating to excise matters were enacted by thirty States in 1901, most of them modifications of existing laws, none showing distinctively new features.

In 1901, Montana and Wyoming were added to the list of States having a State Board of Health. All the States but Georgia, Idaho and Oregon now have such State boards. Various forms of local, sanitary organization have grown up in countries, towns, and villages. Dr. Charles V. Chapin, Superintendent of Health, Providence, is authority for the statement that "the registration of vital statistics in the United States is notoriously inferior to that of most other civilized countries." Only ten States have a satisfactory system of registering vital statistics. Among anti-nuisance laws of recent enactment, are those forbidding the emission of dense smoke in the open air, and also those relating to spitting in public places. Most of these are local laws, but Virginia, during the last year, showed an interesting blending of the religious and sanitary spirit in making it "a misdemeanor to expectorate on church floors or aisles, or otherwise in a church or other place of worship." It will be interesting to see whether this law will diminish the church attendance in that State. Communicable diseases received much attention. Elaborate laws on this subject have been passed by Kansas, Montana, and New Hampshire. Massachusetts leads the States in protecting the public from shell-fish living in sewage-polluted waters. New Mexico forbids the employment of tuberculous teachers in the public schools. Massachusetts was the pioneer State in building in 1898 a sanatorium for consumptives. New York last year appropriated \$100,000 for such a hospital; New Hampshire, Minnesota, Rhode Island, have appointed commissioners to consider the subject. Many recent laws relate to the regulation of embalming.

In the regulations adopted by several States concerning barbers, the element of protection to public health is less conspicuous than the trade-union spirit.

The conflict between oleomargarine and butter is seen in food laws. There is a great lack of uniformity in food legislation.

The creation of public employment bureaus first began in the United States in 1890. There are now twenty-six offices in eleven States. Various laws protect the health of laboring men. Factory inspection has been increased. Laws against insect pests and plant diseases protect the fruit-grower, and there are laws for the protection of animals from contagious diseases. A remarkable growth in interest in matters relating to forestry is seen in recent legislation. Pennsylvania has created a distinct State department in the interest of forestry, and proposes to inaugurate, for purposes of revenue as well as protection, a progressive forest system for the 325,000 acres owned by the State. The year 1900 was characterized by unprecedented interest in game protection. New game laws were passed in thirty-three States and Territories. The number of States now prohibiting the killing of all, or certain, kinds of big game, has been increased to twenty-eight. Concerted agitation has resulted in great progress in the direction of uniform legislation for the protection of song-birds and those that destroy insects. Curious features of game legislation are the Illinois law requiring photographs on non-resident licenses, and an act of Nevada requiring teachers in the public schools to read the game laws at least twice during each school year. Still another is the law of Maine, which punishes by imprisonment for not more than ten years, or a fine of \$1,000, the negligent or careless shooting or wounding of a human being while hunting.

There were passed 168 laws in the various States in 1901 relating to insurance. Legislation on the subject of mortgages is not specially important.

Over 169 road laws were enacted in forty-three States, more than have been passed in any previous year. The bicycle and the automobile have, doubtless, had something to do with this. The contract labor and cash-tax system of building and maintaining country roads is gradually replacing the old statute labor system.

In all this review I have thus far paid no attention to the important part assigned to me, viz., the review of penal legislation. I have space to mention only a few indications. Most significant

was the rapid, simultaneous, yet unconcerted, action of twenty-four States last year in passing laws relating to kidnapping and abduction. The kidnapping of a Nebraska boy awakened general alarm and called attention to the fact that in many States there was no definition of the crime and no penalty attached to it. In three States, Alabama, Delaware and Missouri, the death penalty may now be imposed for kidnapping; in five States the maximum penalty is life imprisonment. The increasing tendency in later years to impose severer penalties for sexual crimes is seen in several States in the raising of the age of protection. California, Michigan, Utah, and Washington, now impose penalties for docking horses' tails. Concerning penal institutions, there is a tendency towards centralization of control, and toward the substitution of reformatories for prisons. Decided progress was made in the extension of the indeterminate sentence in New York, Connecticut, New Hampshire, and Indiana. Parole laws were passed in New York, Connecticut, Minnesota, and Vermont. New York and Vermont adopted probation laws, and Pennsylvania a new commutation law. In Alabama a law was passed requiring inspectors of convicts to establish a separate camp for convicts having tuberculosis. In New York such cases will secure isolation at Clinton Prison. The new hospital for insane criminals in New York is opened at Dannemora, so that that State has now two hospitals for the criminal insane. A new reformatory for women was opened at Bedford, making three reformatories for women in New York State, besides the Women's Prison at Auburn. New York has adopted a new prison at Napanock, which is thus far only a reformatory in name. A new reformatory has also been opened at Rahway, New Jersey.

Few reactionary and unwholesome tendencies appear in the legislation of 1901, though some of it moves on lines of doubtful experimentation, and the question may be raised whether legislation does not tend to excess, and to include measures which are crude and untimely. On the whole, however, it will be found that the general trend of American legislation is along lines of education, equality, philanthropy, the preservation of public health and order, the diffusion of intelligence, and the general development of civilization.

SAMUEL J. BARROWS.